Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matters of	)	
	)	
Deployment of Wireline Services Offering Advanced Telecommunications Capability	)	CC Docket No. 98-147
	)	
and	)	
	)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-98

JOINT REPLY COMMENTS OF ARBROS COMMUNICATIONS, INC., ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES, COMPETITIVE TELECOMMUNICATIONS ASSOCIATION, E.SPIRE COMMUNICATIONS, INC., FAIRPOINT COMMUNICATIONS SOLUTIONS, INTERMEDIA COMMUNICATIONS INC., KMC TELECOM, INC., NEWSOUTH COMMUNICATIONS, INC., AND PATHNET

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Dated: November 14, 2000

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SUMMARY

Predictably, the initial comments of some incumbent local exchange carriers ("ILECs") – Qwest and Sprint being notable exceptions– would have the Commission interpret Section 251(c)(6) narrowly to require ILECs to allow collocation of equipment with only the most rudimentary concentration and transmission functions, if at all. BellSouth, Verizon, and SBC Communications (as well as some smaller and rural ILECs) urge the Commission to adopt the most restrictive interpretation possible of the term "necessary." As the opening comments of the Joint Commenters and numerous other parties demonstrated, the terms of Section 251(c)(6) are more properly interpreted to require ILECs to allow collocation of equipment, and functionalities, that are related to either the operations of interconnection and access to the features, functions, and capabilities of unbundled network elements.

The collocation obligations of Section 251(c)(6) must be interpreted broadly enough to permit achievement of the statutory objectives of Sections 251(c)(2) and (c)(3) – to which Section 251(c)(6) expressly refers. Accordingly, the Commission should reject the parsimonious construction advocated by some ILECs as it could very well lead to *no* collocation at all, rendering Section 251(c)(6) a nullity and undermining the pro-competitive goals expressed in the Act. The fact that a restrictive interpretation of Section 251(c)(6) may hypothetically stimulate collocation alternatives as BellSouth suggests is simply irrelevant to construing the scope of ILECs' statutory obligations.

Furthermore, because collocation must be nondiscriminatory under Section 251(c)(6), if an ILEC uses an equipment type in its own network to perform functions equivalent to interconnection or access to network elements, then CLECs must be allowed to collocate the

same or similar equipment. As a corollary, *all* functions integrated within such ILEC equipment must be permissible in competitor-collocated equipment for the same reason, even if that function is not directly related to interconnection or access to unbundled network elements.

The overwhelming majority of comments side with the Joint Commenters in calling for the Commission to reaffirm its decision to forbid ILECs from requiring separate or isolated collocations and separate entrances. The ILECs offer nothing but the well-worn argument that security concerns require separate or isolated collocations and entrances. The ILECs ignore the fact that the D.C. Circuit specifically rejected security arguments noting that there are "alternative means available to LECs to ensure the security of their premises." Therefore, the Commission should forbid ILECs from requiring separate or isolated collocations and separate entrances. The Commission also should take this opportunity to establish a competitively neutral cost-sharing method to pay for the costs of ensuring security in ILEC offices.

The record confirms that the Commission should readopt and refine its earlier decision that competitors should be able to choose where to collocate their equipment. Any merit to the ILECs' concerns that this policy would violate the ILECs' property rights would be adequately addressed by the adoption of a space reservation policy that enables ILECs to reserve space for growth. The ILECs' arguments that they should choose competitors' collocation space because they are in the best position to do so is a recipe for potential discrimination. To ensure the nondiscrimination requirements of section 251(c) are being met, while preserving ILEC's rights, the Commission should allow competitors to choose where to collocate their equipment pursuant to the procedure advanced in the Joint Commenters initial submission.

The record also demonstrates that Section 251(c)(6) requires ILECs to permit the collocation of CLEC cross-connects as "necessary" to establish interconnection and access to UNEs. This requirement includes cross-connections needed for the provision of interoffice transport. Such cross-connections are integrally related to, and thus "necessary" for, interconnection and access to UNEs where one collocated carrier connects to a second collocated carrier that is interconnecting with the ILEC or buying UNEs from the ILEC. Interpreting Section 251(c)(6) in a more narrow fashion only serves to defeat the pro-competitive goals of Sections 251(c)(2) and (3) and results in perpetuating the ILEC monopoly over the interoffice transport market – an outcome Congress could not possibly have intended when it promulgated Section 251(c)**.**

The record also supports the Joint Commenters argument that the term "interconnection," as used in Section 251(c)(6), encompasses both direct *and indirect* interconnection between two collocated carriers, as contemplated by Sections 251(c)(2) and (c)(3). Nothing in the express language of Section 251(c)(6), as it refers to Sections 251(c)(2) and (3), limits interconnection to *direct* interconnection alone. Furthermore the *GTE v. FCC* decision does not include any language limiting interconnection to *direct* interconnection alone.

The ILECs' extremely narrow interpretation of Section 251(c)(6)'s collocation obligations in the context of cross-connects cuts off competition at the knees. One of the central tenets of Section 251(c) and the Act – to provide CLECs with non-discriminatory access to ILEC networks – would be undermined if such the Commission adopted such an interpretation. Given that ILECs can and do connect with CLECs in the central office, failure to permit CLECs to connect with other CLECs in the central office necessarily discriminates against CLEC access to

the ILEC network and places CLECs at a competitive disadvantage. This discrimination and competitive disadvantage leads to higher costs to CLECs and less consumer choice. If, however, the Commission does not find that the collocation of cross-connects falls squarely within the ambit of Section 251(c)(6) -- as the Joint Commenters have shown that it does – the Commission should use its authority under other provisions of the Act to require the ILECs to provide cross-connection as an unbundled network element. Or, as a final alternative, the Commission should require ILECs to tariff a cross-connection service, in accordance with the language of Sections 201(a) and 251(a)(1).

The comments filed demonstrate that the Commission can and should adopt provisioning intervals that are shorter than 90 days for forms of collocation other than caged. There is no basis for requiring longer intervals or for leaving the establishment of provisioning standards up to the states, as suggested by some ILECs. In many states, the ILECs are already complying with state rules that specify shorter intervals for forms of collocation other than caged. Uniform national standards would better serve the public interest, as they would better ensure that CLECs are able to obtain collocation space nationwide on a predictable and timely basis.

Similarly, the Commission should reject ILEC arguments against adoption of national standards for collocation space reservation. National standards will create more certainty for the CLECs and will avoid the time-consuming, costly process of setting policy on space reservation through the arbitration/state negotiation process. ILEC arguments in favor of longer (10-year) periods for space reservation must also be rejected as *prima facie* unreasonable.

Considering the rapid evolution of technology in this industry and the continuing trend toward smaller and more integrated equipment, lengthy periods for space reservation cannot be justified.

In these reply comments, the Joint Commenters respond to the ILEC's arguments that collocation at remote terminals is limited by space, security and technical feasibility constraints. The record plainly reveals the absurdity of the ILEC's assertions that adjacent collocation alone is an acceptable substitute for physical collocation at remote terminals. As set forth in these reply comments and the initial comments filed in this proceeding, it becomes obvious that arguments raised by the ILECs are nothing more than red-herrings. Furthermore, the record reveals that the ILECs' attempts to dissuade the Commission from considering issues that are ripe for decision, particularly the issues regarding the unbundling obligations associated with DWDM-generated loops, the need to unbundle all QoS classes and amend the Commission's OSS rules accordingly, should all be rejected. Moreover, the ILEC contention that copper loop facilities need not be maintained should be rejected as these functioning facilities provide an important source of competition. Finally, the initial comments reinforce the need to establish a SEEL or Broadband UNE.

Four years of experience have demonstrated that ILECs will seize upon any ambiguity or lack of precision in the Commission's rules interpreting the plan for the competitive provision of telecommunications services, as enacted by Congress. The Commission must be vigilant and clear in stating collocation requirements. Accordingly, the Joint Commenters strongly urge the Commission to act in a fashion consistent with its comments.

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I. INTRODUCTION.

By their attorneys and pursuant to the *Second Further Notice of Proposed Rulemaking* in CC Docket No. 98-147, and the *Fifth Further Notice of Proposed Rulemaking* in CC Docket No. 96-98,[1] Arbros Communications, Inc., the Association for Local Telecommunications Services ("ALTS"), the Competitive Telecommunications Association

[1] *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket 98-147, Order on Reconsideration ("*Order*") and Second Further Notice of Proposed Rulemaking ("*Second Further Notice*"), *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Fifth Further Notice of Proposed Rulemaking ("*Fifth FNPRM*") (rel. Aug. 10, 2000).

("CompTel"), e.spire Communications, Inc., FairPoint Communications Solutions, Inc., Intermedia Communications Inc., KMC Telecom, Inc., NewSouth Communications, Inc., and Pathnet (hereinafter the "Joint Commenters") hereby respectfully submit these reply comments.

As discussed herein, the majority of commenters agree with the Initial Comments of the Joint Commenters that the Commission should readopt, refine, and better explain the pro-competitive and statutory-fulfilling decisions in the *Advanced Services First Report and Order*. Not surprisingly, the majority of ILECs disagree with the Joint Commenters. The ILECs ask the Commission to interpret Section 251(c)(6) in a manner that is inconsistent with both the words and purposes of Sections 251(c)(6) in particular, as well as Section 251(c) and the Act in general. In order to fulfill the purposes of the Act in general and Section 251(c) in particular, the Commission should adopt the proposals made in the Joint Commenters' Initial Comments, as well as the comments made below.

II. THE RECORD REVEALS OVERWHELMING CONSENSUS THAT THE STATUTORY CONSTRUCTION OF SECTION 251(C)(6), INCLUDING THE TERM "NECESSARY," MUST BE ROOTED IN THE FULFILLMENT OF SECTIONS 251(C)(2) AND 251(C)(3).

In their Initial Comments, the Joint Commenters explained that the proper interpretation of Section 251(c)(6) of the Communications Act of 1934, as amended (the "Act"),[2] must be firmly established within the context of Section 251(c) *as a whole* especially because, as the D.C. Circuit observed, "any search for 'plain meaning' in [Section 251(c)(6)] is fruitless."[3] Specifically, the Joint Commenters explained that Section 251(c)(6) obligates incumbent LECs

[2] 47 U.S.C. §251(c)(6). References herein to the Telecommunications Act of 1996 will be to the "1996 Act."

to provide physical collocation in those circumstances where the Commission deems it "necessary" to help satisfy the obligations imposed on incumbent LECs under Sections 251(c)(2) and 251(c)(3).[4] Accordingly, the term "necessary" as used in Section 251(c)(6) need and should not be interpreted in the strictest and narrowest sense to delimit a physical arrangement that is "required" or "indispensable," to achieve a minimally functional connection to an ILEC network or obtain access to an ILEC network element. To do so would essentially render a nullity the Congressional authority granted in Section 251(c)(6) to the Commission (and State commissions) to order incumbent LECs to provide collocation in order to fulfill the objectives of the ILECs' interconnection and unbundling obligations. The D.C. Circuit's decision made clear that the strict sense of "required" and "indispensable" represented only the floor, and not the endpoint, of the scope of the term "necessary" as found in Section 251(c)(6).[5] In other words, as the expert agency entrusted with interpreting the pro-competitive provisions Telecommunications Act of 1996 in the first instance and adopting rules to implement them, the Commission is fully empowered – and is indeed obligated – to eschew such a minimalist interpretation of Section 251(c)(6).[6]

Numerous commenters concur. While the discussion is varied, the vast majority of competitive LEC commenters agree that Section 251(c)(6) must be interpreted in the context

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3 *GTE Service Corp. v. FCC*, 205 F.3d 416, 421 (D.C. Cir. 2000). *See, e.g.*; Joint Comments at 13 and n.51 and cases cited therein.

4 Joint Comments at 11-22.

5 *GTE Service Corp.*, 205 F.3d at 424.

6 *Id.* at 421 ("[t]here is no doubt that Congress has delegated to the FCC the authority to issue regulations implementing § 251(c)(6)."); Joint Comments at 10-12.

of the Act as a whole, especially given the ambiguity of the language used.[7] The Commission explained in its *Local Competition Order* that "access" to a UNE requires the ability to use any feature, function, and capability of the network element.[8] Thus, Section 251(c)(6) must be construed to permit the collocation of any equipment that enables a CLEC to access the features, functions, and capabilities of unbundled network elements ("UNEs").[9] Consequently, the duties of an incumbent LEC under Section 251(c)(6) go beyond facilitating mere physical connection in the most elementary sense.[10]

Based on their initial comments, which are discussed in more detail below, several incumbent LECs would permit, at most, only the simple functions of traffic concentration and transmission in collocated equipment. However, these two functions do not describe all of the functions that allow CLECs to obtain and use the features, functions, and capabilities of UNEs or that are directly related to interconnection. Without a more inclusive interpretation of the incumbent LECs' collocation obligations that focuses on fulfillment of incumbent LEC obligations under section 251(c)(2) and 251(c)(3), new entrants would be precluded from providing at least some services to at least some customers through interconnection or access to UNEs, or the offering of such services by new entrants inherently would not be of the same

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7 *See, e.g.*, Allegiance Comments at 49; Comptel Comments at 2; Covad Comments.

8 *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499, 15,631-632, (1996)("*Local Competition Order*").

9 *E.g.*, Allegiance Comments at 51; AT&T Comments at 10; Conectiv Comments at 9-11; CoreComm *et al.* Comments at 3; Telergy *et al.* Comments at 17.

10 AT&T Comments at 9-10; RCN Telecom Comments at 3, 5-7.

quality as incumbents are able to offer.[11] In short, a restrictive interpretation of Section 251(c)(6) would undercut the objectives of Sections 251(c)(2) and (c)(3), the very sections that the inclusion of Section 251(c)(6) was intended to serve.

Congress recognized that competitive LECs could not be expected to replicate the networks of the incumbents, and it therefore created the obligations of Sections 251(c)(2) and 251(c)(3). Physical collocation of equipment beyond that which only permits physical interconnection in the most minimal sense is required if the objectives of allowing competitive entry without the need to replicate the networks of the former monopolists is to be achieved.[12] For that reason, and in light of the D.C. Circuit's earlier conclusion that the Act, prior to 1996, conferred no authority to allow the Commission to order collation,[13] Congress gave regulators explicit authority to mandate collocation in Section 251(c)(6). As the GSA explains, competitive LECs should not be required to "implement impractical solutions, employ uneconomic configurations, or breach reasonable operational constraints," which would occur if Section 251(c)(6) is read so narrowly as to read collocation out of the statute altogether.[14]

Significantly, one of the major incumbent LECs, Qwest, essentially agrees with the position advocated by the Joint Commenters. As Qwest states: "if significant efficiencies can be obtained in using the equipment at a collocated site which would not be available elsewhere and the equipment is actually used for interconnection or access to network elements,

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11 *See e.g.*, AT&T Comments at 10; Comptel Comments at 3-6; Conectiv Comments at 7; Covad Comments at 17; Northpoint Comments at 5-8.

12 Cisco Comments at 4.

13 *Bell Atlantic Telephone Companies v. FCC*, 24 F.3d 1441 (D.C. Cir. 1994).

14 GSA Comments at 5.

then it would seem to meet the 'necessary' test under section 251(c)(6) of the Act."[15] Qwest goes on to articulate that, as long as the primary function of a given piece of equipment is for interconnection and access to UNEs, a collocated carrier should be allowed to deploy all other functions of such equipment.[16]

Another carrier which is an incumbent LEC in many areas of the country agrees. Sprint argues that equipment that "perform[s] functions . . . directly necessary for interconnection or UNE access" should be available for collocation.[17] The Commission must recognize, Sprint explains, that the industry is undergoing rapid technological change, and Section 251(c)(6) should be interpreted in that light.[18] While Sprint stopped short of expressly advocating the ability to collocate all multi-function equipment that is used to interconnect or access UNEs, it did suggest that when ascertaining whether a CLEC should be allowed to collocate certain equipment, the deployment multi-function equipment by the ILEC itself, the difference in cost and size between the single-function and multi-function equipment, and additional operational obstacles that would be imposed by not permitting the CLEC to use all of the equipment's functions should be considered.[19] Application of these factors would ensure that most multi-function equipment would be available for collocation. In order to expedite

15 Qwest Corporation Comments at 3-4.

16 Qwest Corporation Comments at 10.

17 Sprint Comments at 5.

18 *Id.* at 6.

19 *Id.* at 11.

collocation requests, Sprint suggest that, and the Joint Commenters concur, that the FCC provide a *non-exhaustive* list of equipment that CLECs are entitle to collocate.[20]

It is not surprising, however, that other incumbent LECs favor the most restrictive interpretation of Section 251(c)(6) possible. These interpretations look at 251(c)(6) in a vacuum. By ignoring the statutory context, these interpretations would undermine the potential for collocation as a means to achieve the objectives of Sections 251(c)(2), 251(c)(3), and 706.

BellSouth, for example, contends that collocation on incumbent LEC premises should be limited to equipment and functionalities "necessary" or "indispensable" for access to UNEs or interconnection, ostensibly as defined by the D.C. Circuit.[21] BellSouth contends that narrowly construing Section 251(c)(6) in this way is in the public interest because it will encourage the development of collocation alternatives for competing carriers.[22] As the Joint Commenters made clear in their initial comments, the strict interpretation of Section 251(c)(6) of the sort that BellSouth proffers is not the only one consistent with prior judicial examination[23] and would, in this case, render Section 251(c)(6) a nullity.[24] In addition, the D.C. Circuit itself did not claim to have defined the outside scope of the permissible interpretation of Sections

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20 *Id.* at 7-9. This is not to say that the Sprint list is adequate. Numerous other parties, including the Joint Commenters (at 23), provide lists of equipment types that CLECs should be entitled to collocate that are meritorious. *See, e.g.*, ATG Comments, Seefloth Declaration at 2-3; AT&T Comments at 20-34; Network Access Solutions Corp. Comments at 8-14; Northpoint Comments at 5-8.

21 BellSouth Comments at 4-5.

22 *Id.* at 5.

23 Joint Comments at 12-13.

24 *Id.* at 21, n.73.

251(c)(6).[25] Development of such collocation alternatives would certainly further competitive choice for carriers; the Joint Commenters would welcome CLECs having increased options. The existence of practical and cost-effective alternatives might one day contribute to forbearance under Section 10 of the Act of enforcing the incumbent LECs' collocation obligations under Section 251(c)(6). But the development of collocation alternatives is not an objective of Section 251(c)(6), in particular, or Section 251(c), in general. Accordingly, it is not germane to the interpretation of those provisions. BellSouth's suggestion to the contrary is absurd. Quite simply, the Commission cannot, and should not, relax the Congressionally mandated obligations of the incumbent LECs in order to promote third party collocation alternatives. The warped conclusion BellSouth urges would suggest that 251(c), as a whole, may be slowing the development of competition and all of the FCC's implementing regulations should be abandoned.

Verizon and SBC also take a hard line and, like BellSouth, urge the Commission to adopt the most restrictive of interpretations. SBC claims that Sections 251(c)(2) and (c)(3) are not independent sources of authority for collocation.[26] SBC further contends that an interpretation of Section 251(c)(6) to promote the objectives of the statute as a whole is improper because it would result in an unnecessary taking of private property.[27] The Joint Commenters would not disagree with the allegation that Sections 251(c)(2) and (c)(3) are not sources for the Commission's takings authority, but these provisions can help define it given that they are a

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25 *GTE Service Corp.* 205 F.3d at 424 (anything beyond a strict interpretation of "necessary" as meaning "required" or "indispensable," "demands a better explanation from the FCC").

26 SBC Comments at 13.

referent in the statutory provision granting that authority. As the Joint Commenters explained in their Initial Comments, Section 251(c)(6) was needed because, absent an express grant of takings authority from Congress, there was a serious question in the wake of *Bell Atlantic Telephone Companies*[28] as to whether the Commission had takings authority. Congress resolved that issue in the affirmative through the 1996 Act and granted the Commission and the States such authority to the extent needed to implement the provisions of Sections 251(c)(2) and (c)(3), as the Joint Commenters explained in detail in the opening round. To ignore the statutory purposes related to those portions of the statute that provide for access to incumbent LEC UNEs and interconnection with incumbent LEC networks when interpreting the language of Section 251(c)(6) would be a dereliction of duty by the Commission. The language of Section 251(c)(6) – "physical collocation necessary for interconnection or access to unbundled network elements" – makes clear that interpreting Section 251(c)(6) to further the statutory goals embodied in ILEC interconnection and unbundling regulations is necessary to achieve Congress's intent in giving the FCC takings authority. In short, no collocation consistent with the approach advocated by the Joint Commenters would be "unnecessary."[29]

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27 SBC Comments at 9-10.

28 24 F.3d 1441 (D.C.Cir. 1994).

29 This is not to say that Congress intended "to have ILECs provide wholesale rental space for CLECs to collocate any type of equipment that they found to be efficient." *See* SBC Comments at 11. Rather, collocators may collocate equipment and their functions that enable interconnection under Section 251(c)(2) or access to the features, functions, and capabilities of UNES under Section 251(c)(3). *See, generally*, Joint Comments at 20-21 for a discussion of limiting standards inherent in the interpretation the Joint Commenters support.

Verizon urges the FCC to find that collocation should only be permitted where a carrier has "no reasonable alternative to enable it to obtain interconnection or access to unbundled network elements."[30] Verizon explains its position more fully by arguing that only where the competitor shows that "the cost of alternative interconnection arrangements is so significant that the competitor would be unable to offer a commercially viable service, or if it can prove that the alternative is technologically inferior that and makes its service non-competitive," can *any* collocation be considered "necessary."[31] In other words, Verizon, like SBC – notably the two former Bell companies that have succeeded in obtaining Section 271 in-region long distance authority – seeks to eliminate collocation as a means of interconnection and access to UNEs under most circumstances. Verizon's approach would so restrict the alternatives available to competitive entrants that it is unlikely that the market-opening objectives, and incumbent LEC obligations, of Sections 251(c)(2) and 251(c)(3) would ever be achieved. Consequently, any incumbent LEC that restricts collocation in the manner Verizon supports should *not* be considered a candidate for Section 271 in-region interLATA relief because the incumbent could not show that it had satisfied the items on the checklist related to Sections 251(c)(2) and 251(c)(3).[32]

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30 Verizon Comments at 1.

31 *Id.* at 4.

32 *See* Joint Comments at 15-16 & n.57 (FCC has found collocation under Section 251(c)(6) integral to meeting checklist items regarding interconnection and access to UNES). Verizon's attempt to suggest that the Commission's action regarding loop-back equipment in the *Third Computer Inquiry* resolved a similar issue misses the mark. *See* Verizon Comments at 6. There, the equipment was to be placed on the network side of the demarcation point. If the equipment contained "CPE" functions in addition to "network" functions, it would constitute CPE and the carrier could not claim it as network equipment. In this case, as an initial matter, there is no doubt that the equipment is network equipment. Verizon's example avoids the real question of whether a

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Moreover, Verizon improperly seeks to shift to competitors the burden of whether equipment can be collocated. Given the pro-competitive purposes that collocation is to serve under Section 251(c), placing the burden on competitors regarding equipment being reviewed will simply motivate the ILECs to frustrate and delay all efforts at collocation. Perhaps the best measures the Commission could take to eliminate dilatory tactics associated with competitors' attempts to collocate include, but are not limited to, (1) adopting, as noted above, a non-exhaustive list of equipment and (2) placing the burden of proof on ILECs once a CLEC makes a *prima facie* showing that the functions of equipment it wants to collocate are related to or support interconnection or access to network elements. Further, any equipment that the ILEC itself locates in its premises to interconnect with its network or access its network elements should be subject to a non-rebuttable presumption in favor of a competitor's request to collocate the same or substantially similar equipment anywhere in the incumbent's territory. Moreover, where one collocator is able to collocate a type of equipment anywhere within the ILEC's territory, there should be a non-rebuttable presumption in favor of any carrier that wishes to collocate the same or substantially similar equipment anywhere within the incumbent's operating region.[33] Indeed, it may be proper to render this presumption nationwide since the same standard applies nationally.

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functionality is used for interconnection and access to UNEs or not. As the Joint Commenters explained in their Initial Comments, in order for equipment to be available for collocation, each of its functions that will be operational should be used for or support interconnection or access to the features, functions, and capabilities of UNEs.

33 *See* Sprint Comments at 11. This should be the case even where the ILEC voluntarily agrees to collocate equipment, contrary to SBC's contentions. *See* SBC Comments at 14 n.12. Permitting such collocation is required if the nondiscrimination provision of Section 251(c)(6) is to be given effect. In addition, Section 252(i) of the Act imposes an (continued…)

The overly restrictive interpretations urged by these and other ILECs would give incumbents a huge competitive advantage such that the ILEC obligation to provide collocation in a just, reasonable, and non-discriminatory manner would be interpreted out of existence. ILECs alone would be able to place modern, multifunction equipment in the incumbent LECs premises to interconnect with other network configurations and to access the features, functions, and capabilities of loops and other network elements. Such a result would be in flagrant violation of the nondiscrimination provisions of Sections 251(c)(2), (c)(3), and (c)(6).[34]

The ILECs fail to offer a sound basis for prohibiting the collocation of equipment with multiple functions and the use of the additional functions.[35] With the exception of SBC,[36] the ILECs do not dispute that the trend in the development of modern equipment, especially that used for advanced telecommunications services, is toward smaller, multi-function equipment.[37]

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obligation on an ILEC to permit a requesting carrier to opt into any term related to interconnection or access to network elements. This should include the types of equipment an ILEC permits for purposes of interconnection or access to UNEs.

34 Moreover, if an ILEC deploys and uses certain functions in its equipment that performs interconnection or network element access but some functions are unrelated to those operations, ILECs must nonetheless allow CLECs to deploy such unrelated functions in collocated equipment in order to avoid discrimination.

35 In principle, the Joint Commenters agree that "ancillary panels, equipment, or structures" (SBC Comments at 15) might, strictly speaking, not be directly related to interconnection or access to UNEs. But if such panels, equipment, or structures are not provided by the ILEC at cost-based rates and are used by the equipment the CLEC collocates in order to allow the equipment to effectuate interconnection or access, then collocation of this hardware must be permitted.

36 *But see* Verizon Comments at 7-8. Verizon implies that alleged CLEC plans to collocate multi-function equipment somehow explains why there is so much unused, but reserved, collocation space in its central offices. This does not logically follow, but in any event, proper space reservation policies, as discussed below, should address this issue.

37 SBC Comments at 12. SBC's argument that multi-function takes up more space than single-function equipment is based on a single example. SBC Comments at 12 n.10. The Commission can hardly reach a general conclusion based on the one example, and the
(continued…)

As several commenters explain, SBC's allegation is incorrect, and the failure to have the ability to collocate multiple function equipment in order to interconnect with incumbent LECs and access their UNEs would lead to a material increase in operating costs that would frustrate the offering of competitive services.[38] A prohibition of multifunction equipment would freeze CLECs from collocating equipment in step with the ILECs, putting them at a competitive disadvantage and allowing ILECs to discriminate against other carriers vis-à-vis themselves.[39] As a number of parties point out, in consensus with the Joint Commenters, these "additional" functions are used to access the "functions, features, and capabilities" of loops and other UNEs and basic concentration equipment alone cannot truly be said to allow CLECs to access UNEs fully.[40]

In that event, but also because the collocation of smaller multifunction equipment would actually *forestall* the exhaustion of space within central offices, as CompTel points out, it cannot be said that collocation of multifunction equipment would constitute an "unnecessary" taking of property.[41] The ILECs simply have not adequately explained how using the additional functions of equipment that is deployed for direct interconnection or access to UNEs ever constitutes a greater or larger taking than the original collocation of the equipment. A number of

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Commission should not. The real issue is not properly framed by SBC in any event, as the multiple functions may be directly related to interconnection or access to the features and functions of UNEs. Further, the logical, but absurd, endpoint of SBC's argument is that all CLECs may only collocate the smallest piece of equipment available in the marketplace that performs a particular function and no other.

38 AT&T Comments at 25; Cisco Comments at 7,11; Rhythms Net Comments at 4,14.

39 Qwest Comments at 9-10.

40 *E.g.*, AT&T Comments at 12-13; ATG Comments at 2-4; RCN Comments at 10-14.

41 Comptel Comments at 9-10.

cases make clear that allowing additional use of space that is already subject to a taking or right-of-way does not constitute an additional taking,[42] and that is all that would be at stake here once equipment is permitted in incumbent LEC premises for purposes of interconnection or access to UNEs.[43]

Finally, the Commission should take this opportunity to reiterate that Section 251(c)(6) is technologically-neutral. Some ILECs suggest that advanced telecommunications services, for example, should enjoy a type of second-class citizenship in the collocation context.[44] The deployment of advanced telecommunications services by next-generation CLECs through non-circuit switched technologies, such as ATM or IP switching, often requires the collocation of multi-functional equipment in order for such CLECs to gain access to the local loop. In previous decisions interpreting Sections 251(c)(2) and (c)(3), the Commission specifically found that Congress intended Section 251(c) to be "technologically-neutral."[45] Given that Section 251(c)(6) should be interpreted in light of the ILEC's interconnection and

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42 *Protection of Competitive Networks in Local Telecommunications Markets, First Report and Order*, WT Docket No. 99-217, FCC 00-366 (Oct. 25, 2000) ¶ 89 (requiring utilities to provide competitive access to rights-of-way they obtained from property owners does not constitute additional taking from property owners); *OTARD Second Report and Order*, 13 FCC Rcd. 23,874 (1998) ¶ 27 (prohibition of restrictions on placement of video reception devices in areas within a tenant's control not a takings of owner's property).

43 As noted above, the Commission should not adopt rules that limit all CLECs to the smallest piece of equipment currently available that performs a particular function.

44 *See, e.g.*, SBC Comments at 15.

45 *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 13 FCC Rcd 24012,¶ 11 (1998), *remanded sub nom U S WEST Communications, Inc. v. FCC*, No. 98-1410 (D.C. Cir. Aug 25), *on remand* 15 FCC Rcd 385 (1999) ("Advanced Telecom Remand Order"), *appeals pending sub nom. MCI WorldCom, et al. v. FCC*, Nos. 00-0102, *et al.* (D.C. Cir. Filed Jan. 3, 2000).

unbundling obligations, an interpretation of Section 251(c)(6) that requires the collocation of only that equipment used in a circuit-switched network would violate the Act.

In the absence of such clarification, next-generation voice-providers – unlike their direct ILEC and CLEC competitors using traditional circuit-switched technologies – may be needlessly forced to collocate equipment at non-ILEC sites and to use access facilities instead of local loops for access to end users. Clearly the "technology-neutral" mandate of the Act, as confirmed by the Commission, did not intend that access to collocation and unbundled loops be limited to only those CLECs providing circuit switched technology. To this end, the Commission should leave no doubt that ILEC attempts to block collocation of multifunctional equipment not strictly necessary for access to a circuit switched network will not be tolerated.

III. THE DECISION BY THE D.C. CIRCUIT AND THE RECORD DEMONSTRATE THAT THE COMMISSION SHOULD FORBID ILECS FROM REQUIRING SEPARATE OR ISOLATED COLLOCATIONS AND SEPARATE ENTRANCES, AND SHOULD PROVIDE COMPETITORS WITH THE ABILITY TO CHOOSE WHERE THEY COLLOCATE THEIR EQUIPMENT.

As discussed in Joint Comments,[46] the D.C. Circuit affirmed the Commission's decision regarding caged collocation and remanded other parts of the Commission's "physical collocation" discussion for further consideration and refinement.[47] For the same reasons it forbid the ILECs from requiring caged collocation,[48] the Commission should forbid ILECs from requiring separate or isolated collocation, and separate entrances. Even if the ILECs are willing

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46 Joint Comments at 30-31, 39-41.

47 *GTE v. FCC*, 205 F.3d at 425, 426.

48 *See Id.* at 425.

to absorb the additional costs associated with these measures, which it appears they are not,[49] cages, walls, and separate entrances needlessly occupy space, thereby wasting it. Furthermore, cages, walls, separations, and separate entrances take time to construct, unnecessarily delaying collocation. As if acknowledging the foregoing, several ILECs attempted in their initial comments to argue that security concerns are the main reason to require separate/isolated space and separate entrances.[50] But the D.C. Circuit has already rejected this argument specifically noting that there are "alternative means available to LECs to ensure the security of their premises."[51]

Furthermore, as discussed in the Joint Comments, competitors should continue to be able to choose where to collocate their equipment.[52] The ILECs' arguments that this policy would violate an ILECs' property rights would be negated by the adoption of a space reservation policy that enables ILECs to reserve space for growth. The ILECs' arguments that they should choose competitors' collocation space because they are in the best position to do so is a recipe for disaster, not to mention discriminatory. To ensure the nondiscrimination requirements of section 251(c) are being met, the Commission should allow competitors to choose where to collocate their equipment.

A. THE D.C. CIRCUIT'S DECISION ALLOWS AND REQUIRES THE COMMISSION TO BETTER EXPLAIN ITS DECISIONS REGARDING PHYSICAL COLLOCATION.

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49 *See, e.g.*, SBC Comments at 28-29.

50 SBC Comments at 28-29; Verizon Comments at 17-18, Poling Decl. at 6-9, Maples Decl. at 7-10.

51 *GTE v. FCC*, 205 F.3d at 425.

52 Joint Comments at 31-39.

In its initial comments the Joint Commenters argued that the D.C. Circuit's decision regarding caged collocation required the Commission to reject caged, isolated, and/or separated collocation.[53] Having already lost on caged collocation,[54] the ILECs attempt to seize on the part of the court's decision that found that the Commission did not fully explain why competitors should (1) not be subject to segregated collocation space; (2) not be required to use separate entrances; and (3) choose collocation space, to attempt to reconstitute a caged-like physical collocation requirement that is not only not required by Section 251(c)(6) but is also unnecessarily expensive, inefficient, time-wasting, and space-wasting.[55] Bottom line, however, the D.C. Circuit found that:

> The FCC offers no good reason to explain why a competitor, as opposed to the LEC, should choose where to establish collocation on the LEC's property; nor is there any good explanation of why LECs are forbidden from requiring competitors to use separate entrances to access their own equipment; nor is there any reasonable justification for the rule prohibiting LECs from requiring competitors to use separate or isolated rooms or floors.[56]

As a result, the court vacated the Commission's "sweeping rules," noting that "[o]n remand, the FCC will have an opportunity to refine its regulatory requirements to tie the rules to the statutory standard."[57] The Commission can thus re-institute, or even build upon, its decisions in the *Advanced Services First Report and Order*; it just has to explain why it is doing so.

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53 Joint Comments at 30-31, 39-41.

54 *GTE v. FCC*, 205 F.3d at 345; *see infra* footnote 58.

55 *See, e.g.*, SBC Comments at 26-28; BellSouth Comments at 9

56 *GTE v. FCC*, 205 F.3d at 426.

57 *GTE v. FCC*, 205 F.3d at 426; *see* Covad Comments at 32; Telergy, et.al. Comments at 35-36.

B. THE D.C. CIRCUIT'S DECISION REQUIRES THE COMMISSION TO FORBID ILECS FROM REQUIRING ISOLATED OR SEPARATE COLLOCATION AND SEPARATE ENTRANCES.

The D.C. Circuit rejected the ILEC argument that Section 251(c)(6) requires caged collocation only and affirmed the Commission's decision to require cageless collocation.[58] Caged collocation is one of several methods for separating or isolating competitors' equipment from the ILECs' equipment. Cageless collocation does not involved such separation. It does not matter if the separation is a cage or a wall or a fence; it is simply a method of separating or isolating competitors' equipment from the ILEC's equipment. The only justification the ILECs offer for justifying separation is security.[59] However, the Commission already has determined that cages are not necessary to ensure security.[60] The D.C. Circuit specifically affirmed the Commission regarding its decision not to allow the ILECs to require cages, noting that "it is hardly surprising that the FCC opted to prohibit LECs from forcing competitors to build cages, *particularly given the alternative means available to LECs to ensure the security of their premises.*"[61] If the Commission believes its decision to forbid cageless collocation was correct, it should similarly forbid the ILECs from requiring isolated or separate collocation.

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58 "[N]othing in the statute can be read to *require* caged collocation, so the FCC surely was free to promulgate reasonable rules implementing physical collocation under a cageless regime." *GTE v. FCC* 205 F.3d at 425.

59 *See e.g.*, Verizon Comments at 16-18; Verizon Poling Decl. at 6-9; SBC Comments at 29. The Joint Commenters note that most of the security "violations" noted by Verizon occurred during a period where separate, isolated, and caged collocations were required by the ILECs. *See* Verizon Poling Decl., Att. B-1. These "violations" can better be handled by the justice system, if criminal, or otherwise by the State commissions.

60 *Advanced Services First Report and Order*, 14 FCC Rcd at 4784-85,4787-89, ¶¶42, 46-49; *see* Northpoint Comments at 21; Covad Comments at 34.

61 *GTE v. FCC*, 205 F.3d at 425 (emphasis added).

C. THE COMMISSION SHOULD RECOGNIZE THAT SEPARATE AND ISOLATED COLLOCATION AS WELL AS SEPARATE ENTRANCES SUFFER FROM THE SAME PROBLEMS AS CAGED COLLOCATION.

As the record amply supports, there are several reasons for the rule prohibiting LECs from requiring competitors to use separate or isolated collocation and separate entrances. Despite Verizon's argument to the contrary, the record indicates that separate or isolated locations detract from the quality and availability of collocations and add to the cost and delay to the collocation process. Caged collocation, separate and/or isolated spaces, and separate entrances adds expense to the collocation process.[62] Even if the ILECs are willing to absorb these additional costs, which it appears they are not,[63] cages, walls, and separate entrances take time to erect and take up additional room.[64] Furthermore, if the space is not adjacent to certain types of ILEC equipment, it may affect the quality of the services provided.[65] Verizon admits that it likes to group equipment with similar functions together.[66] Competitors too would like to group equipment with similar or complementary functions together, including CLEC equipment with or near ILEC equipment with which it will physically connect. The record demonstrates that some services require competitors' equipment be near the ILEC's equipment.[67] Therefore segregating competitors' equipment into separate and isolated collation is more costly, less space

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62 *See* Allegiance Comments at 72; Northpoint Comments at 20-21; Covad Comments at 34.

63 *See, e.g.*, SBC Comments at 28-29.

64 *See* Conectiv Comments at 22; Northpoint Comments at 21; Covad Comments at 34; *see also* Telergy et. al. Comments at 36. Walls and cages occupy space, space that can used for collocation. Moreover, walls and cages can create unusable space.

65 Northpoint Comments at 20-21; Covad Comments at 33.

66 Verizon Comments at 14.

67 *See e.g.*, Northpoint Comments at 20-21.

efficient, less time efficient, may detract from competitors' ability to offer some services, and – not least – is discriminatory.[68]

Similarly, there are *several good reasons* for prohibiting ILECs from requiring competitors to use separate entrances to access their equipment. Separate entrances only make sense if competitors' equipment is physically separated from the ILECs' equipment. Moreover, building separate entrances takes time and costs money, money the ILECs are unwilling to pay despite the "benefits" they would purportedly receive.[69] Separate entrances take up additional space in the central offices space that could be used for other more productive purposes. Therefore the policy and legal reasons for forbidding ILECs to require caged collocation apply equally well the issue of separate or isolated collocation and separate entrances.

D. CLECs AND ILECs SHOULD SHARE THE COSTS OF SECURITY ON A COMPETITIVELY NEUTRAL BASIS.

As discussed in our Initial Comments, the Joint Commenters urge the Commission to take this opportunity to establish a cost allocation model for the equitable recovery of ILEC costs added by security measures related to collocation. Whatever security is needed – the Joint Commenters agree with the Commission and the D.C. Circuit that caged, separate or isolated space is not needed to ensure security – it benefits both the ILECs and the

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68 *See* Conectiv Comments at 22; Northpoint Comments at 21-22. We note that some competitors might welcome separate or isolated collocation. Those competitors should be allowed to select such collocation if the ILECs make it available. However, ILECs should be prohibited from creating isolated or separate collocation space in such a way that reduces the useful space for collocation or requires competitors to take physical collocation in separate or isolated areas.

69 SBC Comments at 28-29.

competitors.[70] SBC's argument that security is required solely because of competitors and, thus, security only benefits competitors, such that only competitors should pay for walls, cages, and other separations is silly and just reveals how SBC views competition.[71]

E. THE COMMISSION SHOULD AFFIRM AND BETTER EXPLAIN ITS DECISION TO ALLOW COMPETITORS TO CHOOSE THEIR COLLOCATION SPACE IN THE ILEC OFFICE.

1. ILEC Space Reservation Policies Preserve the ILECs' Property Rights in Their Offices.

The ILECs claim that allowing competitors to choose their collocation space violates the ILECs' property rights and unnecessarily "takes" their property.[72] This assertion is incorrect. As discussed below,[73] the Commission should adopt nationwide standards for entities, including ILECs, to reserve space in an ILEC office. Providing ILECs with the ability to reserve space preserves an ILEC's property rights by ensuring that the ILEC has and will have sufficient space and opportunity to grow its business.

2. Allowing ILECs to Choose Collocation Space for Competitors is a Recipe for Poor Collocations, Increased Costs, Increased Delays, More Litigation and Less Competition.

Verizon, BellSouth, Qwest, and SBC argue that they should choose where to collocate competitors' equipment and ask the Commission to simply trust them on physical

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70 *See* Joint Comments at 42; Telergy et. al. Comments at 36, n.79.

71 SBC Comments at 29. According to SBC, "[u]nder the Eighth Circuit's decision, if the incumbent's network must be altered solely for the CLEC's benefit, *a fortiori* it is the CLEC, not the ILEC, that must pay." *Id.* The Commission should reject this argument, like it should almost all of SBC's comments. Indeed, Northpoint argues plausibly that the ILECs are the sole beneficiaries and therefore ILECs should pay for security costs. Northpoint Comments at 21. Cleverly, therefore, an allocation methodology is needed.

72 *See, e.g.*, BellSouth Comments at 9;

73 *See* Joint Comments at 59-61; *infra* Section VII, B.

collocation.[74] BellSouth goes so far as to recommend that the Commission not impose any requirements or national standards.[75] When the Commission reads a suggestion such as BellSouth's, the Commission should, as it has in the past,[76] translate this as a promise to impose delays, greater costs, and inferior collocations. Under BellSouth's "suggestion," every time a CLEC has a trouble or a dispute, it has to engage in a cost benefit analysis: weighing whether filing a complaint, the cost of litigation, and the delay inherent in waiting while a State commission resolves the issue is worth the better collocation space. This truly is a recipe for poor collocations, increased costs, increased delays and more litigation, in other words, weakened competition. As it did in the *Local Competition* proceeding, the Commission should decline to accept such a proposal.[77]

The Commission can remove most of this uncertainty by instituting clear rules that cannot be twisted into some unrecognizable shape. Removing as much uncertainty as possible improves the chances that a competitor will obtain a quality collocation in a timely

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74 For example, BellSouth argues that there is no need for the Commission to adopt a national space assignment policy because each ILEC office is unique, "as are the zoning and permitting intervals that vary from state to state." BellSouth Comments at 9; *see* Qwest Comments at 24. Therefore, BellSouth argues that "[i]f there are disputes about an incumbent's space assignment policies, the state commissions are best situated to resolve any disputes on a case-by-case basis." BellSouth Comments at 9.

75 BellSouth Comments at 9; Qwest Comments at 24.

76 *See infra* note 77.

77 *See e.g.*, *Local Competition Order*, 11 FCC Rcd at 15656, ¶ 307, 15783-84, ¶ 558, 15797, ¶ 585. The more certainty that the Commission can provide removes some of the issues an ILEC can use to stall collocation and increase its costs. Moreover, removing issues from consideration reduces the burden on the state commissions and creates some uniformity throughout the states. Uniformity is useful for CLECs who are operating in more than one state, which is probably most CLECs.

manner. It reduces the chance of litigation which reduces potential costs and delays. It also reduces the burden on the state commissions and creates some uniformity throughout the States.

BellSouth and SBC argue that ILECs are in a better position to know where to place collocations and that the CLECs are only interested in themselves.[78] Perhaps these claims are true. But, what incentives do the ILECs have to provide efficient, cost-effective collocation for competitors? What is the enforcement mechanism for ensuring that ILECs act in a manner consistent with the Act? Indeed, as the Commission has noted in the past, the ILEC's have little or no incentive to help their competitors.[79] Moreover, ILECs have every incentive to exhaust collocation space as fast as possible. This ensures that fewer competitors can be physically collocated. As a result, the ILECs may start to locate and install their own equipment in such a manner as to use as much space as possible, thereby exhausting as much space as possible. To guard against such a possibility the Joint Commenters ask that the Commission provide State commissions with the task of ensuring that ILECs do not install their own equipment in a manner that wastes valuable space in the ILEC office. While the ILECs suggest that competitors might

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78 SBC Comments at 28; BellSouth Comments at 9; Qwest Comments at 23. Verizon complains that entities are wasting collocation space without using it. Verizon Comments at 7-8. The Joint Commenters agree with Verizon that completely unused collocation space should, after notice and set time, be returned to the ILEC so that other entities seeking collocation can use it. Some of the pictures are of caged collocations. *See* Verizon Comments, Poling Decl. at Attachment B-3. The Joint Commenters note that those collocations are the exact reason that the Commission decided against caged collocation and allowed shared collocation, *i.e.*, caged collocations imposed minimum space requirements, wasted space, and were expensive. The D.C. Circuit affirmed the Commission on these decisions for the very reason that caged collocation, like separate or isolated collocation, inefficiently uses space, costs more, and is not necessary to ensure security. Nevertheless, unused collocation space should be treated like reserved space. In cases of underutilized space, if the competitor was required to take the extra space, the competitor should be entitled to a reduced collocation fee and a refund on the rents the ILECs collected for the extra space that the competitor did not need.

79 *Local Competition Order*, 11 FCC Rcd at 15656 § 307.

have such motives, competitors do not have the time or the resources to take such steps. Clearly, some of the ILECs, with their superior knowledge of the office and their seemingly inexhaustible resources, would have the time and resources to engage in such activities at critical locations. As such, BellSouth and SBC's argument is really an argument for significant regulatory oversight over the placing of competitors' equipment in ILEC offices. If possible, the Commission should avoid such regulatory involvement by creating in its rules incentives for the carriers to act in furtherance of the statutory goals without further intervention.

If the ILECs are serious about lending their expertise in space management to the collocation process – something the Joint Commenters seriously doubt – then this expertise can be incorporated into the Joint Commenters' proposals in their Initial Comments.[80] On the maps provided by the ILECs, the ILECs can designate areas it recommends certain equipment be collocated.[81]

3. Unequal Bargaining Power for a Bottleneck Facility Requires Regulation Providing Competitors with the Ability to Choose or at least Participate in the Collocation Process.

A significant problem in space selection is unequal bargaining power. CLECs do not have the option of finding another place to collocate the ILECs control the bottleneck facility in which competitors need to obtain physical collocation. The purpose of regulation is to intercede into situations like this, where there is unequal bargaining power. If the ILECs did not have market power, *i.e.*, if competitors had a choice of where to physically collocate, the ILECs would be right, and regulation would be unnecessary. In a competitive market, ILECs would

[80] Joint Comments at 37-39.

attempt to offer their customers, in this case their competitors, the best collocation space at the lowest rates possible; failure to do this would lead to a loss in business to competitors. Unfortunately the market for physical collocation is not competitive. Nevertheless, physical collocation is necessary for competition.

4. Allowing Competitors to Choose Collocation Space Meets the Nondiscrimination Requirements of Section 251 in the Most Equitable and Least Regulatory Manner.

So if the ILECs have the ability to reserve the space they need in the future, what is the disagreement about? It is about the space an ILEC does not use or need. If space is space, the ILECs should not care where the competitors collocate their equipment.[82] If there are differences in space, *e.g.*, proximity to other equipment, cost to use, and so forth, the nondiscrimination requirements are called into play. Verizon admits that not all space is equal. In its comments Verizon states: "Equipment with similar functions is grouped together; room for growth is planned for equipment, such as switches and frames, that must be contiguous."[83] If this is true for Verizon, why would it not be true for Verizon's competitors who are cross-

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81 Joint Comments at 37. The ILECs cannot limit collocation in any area to specific equipment because of the limitations of Section 251(c)(6). *See* Joint Comments at 31-32.

82 The ILECs have attempted to argue that security concerns require that they separate or isolate competitors' equipment. As discussed above, the D.C. Circuit has already affirmed the Commission's determination that there are alternative methods for ensuring security. *See supra* section III, B.

83 Verizon Comments at 14; *see* BellSouth Comments at 10. BellSouth states that it "does reserve growth floor space for its own needs that is contiguous to its existing equipment." But, in another ILEC admission that what is good for the ILEC is not good for the competitor, BellSouth states in the very next paragraph: "Separation of collocation space does not inhibit interconnection." BellSouth Comments at 10; *but see* Northpoint Comments at 20 (arguing that competitors also need contiguous collocations).

connecting their equipment with the ILEC's facilities?[84] Assuming that Verizon is a rational actor when it decides where to locate its equipment in its offices, if Verizon thinks it is important to have its switches near its frames, why would anyone think that competitors using Verizon switches or frames would also not want to be close to them? Northpoint answers this question directly; stating that competitors need their collocations to be contiguous and need them to be within a certain distance of specific ILEC equipment.[85] Neither the ILECs, nor the Commission, nor the court can ignore the nondiscrimination requirements of sections 251(c)(2), (c)(3), and (c)(6).[86]

The best way to ensure collocation space is offered to competitors in a just, reasonable, and nondiscriminatory manner is to have competitors choose their own space as the ILECs do.[87] If competitors cannot select their own space there will be delay, additional cost, and increased litigation as competitors fight their way through unnecessary steps, poor space assignments, and an increased number of challenges before state commissions.[88] In considering

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84 *See* Northpoint Comments at 20.

85 Northpoint Comments at 20; *see* Covad Comments at 33.

86 *See* Northpoint Comments at 18-19; Focal Comments at 8; Covad Comments at 33-34. It is disturbing that the court failed to acknowledge the nondiscrimination requirements in Section 251(c)(6). See 205 F.3d at 426 (quoting the second half of 251(c)(6)). The Commission should not allow itself or the courts to focus so thoroughly on one section of subsection 251(c)(6) that it misses other important elements of the subsection.

87 As discussed in the Joint Comments, ILECs must provide physical collocation pursuant to the requirements of not only Section 251(c)(6), but also Sections 251(c)(2) and 251(c)(3) Joint Comments at 14-22, 30-31; *see* Covad Comments at 33.

88 "The Commission should be aware that ILEC choices in this regard could affect both the costs and scope of services offered by CLECs. In the extreme, an ILEC . . . could select collocation space that is as far away as possible from its own equipment in order to increase the costs of cross-connect facilities and to impair, at least marginally, the CLEC's ability to offer services, such as xDSL-based services." Sprint Comments at 14; *see* Covad Comments at 32.

whether these requirements are being met the Commission must consider how the ILEC's locate their own equipment in their offices, how the ILECs locate the equipment of their affiliates and subsidiaries in its offices, and how the ILEC's locate competitor's equipment. Verizon's claim that this comparison is meaningless[89] contradicts the way the Commission traditionally decides whether an ILEC is engaging in discriminatory behavior.[90] Therefore the Commission should allow competitors to choose space just as the way ILECs choose space for themselves, *i.e.*, in a manner that assures efficient quality services and is cost effective. Allowing competitors to choose space is wholly consonant with the Act because Section 251(c)(6) contains the limitations on the ILECs' ability to deny physical collocation -- practicality for technical reasons and space.[91] Generally speaking, if space is available to a requesting carrier and it is technically reasonable to allow collocation in the space, the space is subject to collocation.[92] This includes the collocation of microwave transmission facilities that are used for interconnection and access to UNEs.[93]

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89 Verizon Comments at 15 ("The Commission asks whether [the Section 251(c)(6)] standard is met if the incumbent assigns space to a collocator that costs more or takes longer to provision than space the incumbent assigns to itself or its affiliates. Such a comparison is meaningless." (citation omitted)).

90 *See, e.g., Local Competition Order,* 11 FCC Rcd at 15612, 15656, §§ 218, 312; *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Second Report and Order and Memorandum Opinion and Order, 11 FCC Rcd 19392, 19444 § 101, 19446, § 106.

91 47 U.S.C. § 251(c)(6). Other limitations on the ILECs obligation to permit other entities to collocate exist but they do not relate to space selection. *See* Joint Comments at 20-22.

92 *See* Joint Comments at 31-32.

93 *See* ALTS October 24, 2000, *ex parte* filing, in Docket No. 98-147. In its *ex parte* filing ALTS argues that the Commission should clarify the application of the collocation rules to collocation of microwave transmission equipment on ILEC office rooftops and, if necessary, update those rules. *Accord* Winstar Comments at 5-7 (seeking strengthening of microwave collocation rules.)(While the Joint Commenters believe Winstar is correct that most microwave collocation could meet a more strict construction of Section

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Therefore, the Commission should adopt the procedures outlined in our Initial Comments. [94] The Commission should also encourage the parties to negotiate physical collocation space terms; however, it should provide competitors with the bargaining power needed to successfully complete such negotiations, *i.e.*, clear and concise collocation rules including competitors having the right to choose collocation space when the parties cannot agree. Adopting such rules is the least regulatory way to ensure that competitors obtain physical collocation on rates, terms, and conditions that are just, reasonable, and nondiscriminatory.[95]

5. The Commission Must Take Other Steps to Ensure that Physical Collocation is Offered on a "Just, Reasonable, and Nondiscriminatory" Basis Pursuant to Section 251(c)(6) as well as Sections 251(c)(2) and 251(c)(3).

Besides providing collocators with the ability to choose where to collocate their equipment in an ILEC's office, the Commission must take other complementary steps to ensure that the ILECs provide physical collocation pursuant to Section 251(c)(6) in particular and Sections 251(c)(2) and 251(c)(3) in general. For example, the Joint Commenters agree with Covad that Verizon is acting in a discriminatory and unreasonable manner in the way it

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251(c)(6), such facilities certainly meet the proper standard, *i.e.*, that outlined in the Initial Comments of the Joint Commenters.) As discussed in the *ex parte*, there is no longer reason to treat microwave collocation differently than regular collocations. ALTS *ex parte* at 4. Since the filing of initial comments in response to the *Second Further Notice*, the Washington Public Service Commission has adopted an order requiring ILECs to treat microwave collocation requests the same as other physical collocation requests, provisioning such collocation in the same intervals. WAC 480-120-560, Docket No. UT-990582 (adopted October 25, 2000). Parties in Texas have also entered into a stipulation with SBC that will subject SBC to similar requirements through its State collocation tariff. *See* Amended Stipulation filed by SWBT, Proceeding to Establish Permanent Rates for Southwestern Bell Telephone Company's Revised Physical and Virtual Collocation Tariffs, Texas PUC Docket No. 21333 (filed October 27, 2000).

94 Joint Comments at 37-39.

determines how much it charges competitors for power.[96] The Commission should make it clear to the ILECs that the ILECs may not engage in unjust, unreasonable, and/or discriminatory processes not just in providing collocation, but everything associated with collocation, including security, power, and environmental controls.

IV. THE RECORD DEMONSTRATES THAT THE FULL IMPLEMENTATION OF SECTIONS 251(C)(2) AND (3) OF THE ACT REQUIRES COLLOCATORS TO BE ABLE TO CROSS-CONNECT WITH EACH OTHER.

The Joint Commenters will not reiterate at length each of the arguments in support of the required collocation of cross-connects proffered in their Initial Comments. These arguments are clearly advanced in the Initial Comments. Rather, the Joint Commenters will use this opportunity to focus on calling the Commission's attention to the *overwhelming* amount of support received for the position that, as previously determined by the Commission in its *Advanced Services Report & Order,* Section 251(c)(6) encompasses an obligation that ILECs permit cross-connects between collocators.

(…continued)

95 Joint Comments at 38-39.

96 *See* Covad Comments at 46; *see also* Digital Broadband Communications Inc., Declaration of Theresa M. Landers, filed in Application by Verizon New England Inc. for Authorization Under Section 271 of the Communications Act to Provide In-region InterLATA Service in the State of Massachusetts, CC Docket No. 00-176, at ¶¶16-17 (included as Attachment 1 to this filing).

A. MANDATING THAT ILECS PROVIDE CLECS WITH THE ABILITY TO CROSS CONNECT WITH EACH OTHER IS CONSISTENT WITH THE STATUTORY PURPOSES SECTION 251(C)(6) OF THE ACT.

1. Collocation of cross-connects are "necessary" to enable competitive carriers to interconnect and access unbundled network elements in the ILEC networks.

As noted in Section II, *supra*, commonly-accepted principles of statutory interpretation and the record in this proceeding substantially support the argument of the Joint Commenters that the term "necessary," as used in Section 251(c)(6) is not limited to the strict sense of "required or indispensable." The Joint Commenters' Initial Comments supported, *inter alia*, Section 251(c)(6)'s inclusion of cross-connections between collocators as both "necessary" to enable access to interconnection and unbundled network elements by other competitive carriers, and to ensure that ILECs fully meet their interconnection and unbundling obligations under the Act. In their Initial Comments, the Joint Commenters explained that where a carrier providing competitive interoffice transport connects to a second collocated carrier that is interconnecting with the ILEC or buying UNEs from the ILEC, a cross-connect between the two is "necessary" for purposes of interconnection and access to UNEs by the second carrier.[97] The Joint Commenters emphasized that failure to require the collocation of cross-connects for competitive transport providers would have a "chilling effect" both on carriers' abilities to provide advanced telecommunications services and on the development of a competitive interoffice transport market, thwarting the pro-competitive objectives of Sections 251(c)(2) and 251(c)(3).[98] Interoffice transport would continue to remain an ILEC monopoly market, and

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97 Joint Comments at 44.

98 *Id*. at iii, 45.

advanced fiber deployment would be stymied – results that Congress could not possibly have intended when it promulgated Sections 251 and 706.[99]

In their Initial Comments, the Joint Commenters made clear that the "necessity" of cross-connects was not limited to enable collocators to access alternate suppliers of interoffice transport.[100] Numerous commenters explain that Section 251(c)(6) requires ILECs to permit competitive carriers to construct cross-connects with any collocated carrier.[101] The Joint Commenters concur. Where both CLECs are using collocation to interconnect or access ILEC UNEs, cross-connects between them very probably will support traffic that originates, terminates, or is carried at some point in ILEC facilities. For example, ancillary switching functionality at a collocated remote switching module would likely take advantage of the cross-connect to switch and transmit a call originating with a CLEC customer or an ILEC loop UNE destined for the end user of another collocated carrier. In that situation, the cross-connect is facilitating access by the second CLEC to the ILEC UNE.

Predictably, with the exception of Sprint[102] and Qwest,[103] who both have CLEC and ILEC internal interests, none of the ILEC commenters supported a finding that the Act

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99 *See id*. at 45-47.

100 *Id.* at 43, n.131.

101 *See* @Link Networks Inc. Comments at 26; ATG Comments at 2-3; Allegiance Comments at 69-70; AT&T Comments at 32; COMPTEL Comments at 7; Covad Comments at 26-27; CTSI, Inc. and Waller Creek Communications Inc. d/b/a Pontio Communications Corporation Comments at 16; Fiber Technologies Comments at 8; Focal Comments at 14; GSA Comments at 11-12; Lightbonding Comments at 3-5; MFN Comments at 24; Mpower Comments at 26; PF.Net Comments at 3; RCN Comments at 16; RythymsNet Comments at 27; Sprint Comments at 12; Telergy, Adelphia Business Solutions, Inc., and Business Telecommunications, Inc. Comments at 32-33; WORLDCOM Comments at 10-11.

102 Sprint Comments at 3, 12-14.

requires ILECs to permit CLECs to cross-connect to each other for purposes of interconnection and access to UNEs.[104] Indeed, most of these carriers strongly urge the Commission to interpret the term "necessary" as narrowly as possible, so as to avoid having to permit competitive carrier cross-connects under any circumstances.[105] Such positions, if adopted, would succeed only to strip Section 251(c)(6) of its full meaning. SBC claims that, in lieu of cross-connects under Section 251(c)(6), CLECs simply may resort to leasing cross connection facilities out of ILEC access tariffs as they have done "for decades."[106] Such a position all but ignores the fundamental, market-opening principles of Section 251. This option would be costly and provides no viable solution for ILEC competitors. Furthermore, the cross-connects that may be leased out of SBC's access tariff are limited to those required to provide lit fiber *only* and not the dark fiber that carriers such as Allegiance and MFN need to provide customers with access to unlimited bandwidth. Verizon's position is that interconnection between collocators is not "necessary' under Section 251(c)(6) since there is "nothing unique about the ILEC's central

(…continued)

103 While Qwest does not adopt the absolute standard advanced by the other ILECs and *states its support for the ability of CLECs to cross-connect where such CLECs are already lawfully collocated in the central office*, Qwest nevertheless refuses to permit CLECs to collocate cross-connects for the sole or primary purpose of providing interoffice transport. Qwest Comments at 16.

104 BellSouth Comments at 7; SBC Comments at 23-25; USTA Comments at 5; Verizon Comments at 12-13.

105 BellSouth Comments at 4-5; SBC Comments at 10; USTA Comments at 4; Verizon Comments at 1-4. As noted above, Qwest does not adopt as rigid a standard as the others. In an attempt to balance its internal CLEC and ILEC needs, however, Qwest states that where significant efficiencies can be achieved in collocating the equipment and where the equipment is actually used for interconnection and access to UNEs, it would "seem to meet the 'necessary' test under Section 251(c)(6) of the Act. Qwest Comments at 3-4. However, in practice, Qwest is attempting to restrict CLEC cross-connects in order to eliminate competitive interoffice transport providers in Qwest's territory.

106 *Id.* at 24-25.

office that prevents collocators from connecting to each other elsewhere." This view ignores the underlying purposes served by cross-connects as described above and would result in gross inequities and unreasonably discriminatory interconnection costs for CLECs.[107] USTA similarly advocates a strict interpretation of Section 251(c)(6) as precluding the Commission from "ignor[ing] the fact that collocation of equipment required for cross-connection of CLEC facilities was not necessary for access to ILEC interconnection and UNEs.[108]

Notably, SBC *specifically acknowledges* in its comments that where a requesting carrier has collocated equipment to interconnect with the ILEC's network or to access UNEs, such a carrier "[c]ould, of course, collocate its own fiber transport facilities, *including facilities provided by a third party on a subcontract basis.*"[109] This statement strongly supports the position of the Joint Commenters -- and the vast majority of commenters to this proceeding – that if a CLEC that is lawfully connected to the ILEC network may collocate cross-connects for purposes of transport, a third party competitive transport provider certainly should be entitled to do the same, since there is little if anything to distinguish it from "a third party on a subcontract basis." Moreover, allowing a transport provider to cross-connect with collocated carriers would avoid space exhaustion issues that could attend a situation where *each* CLEC was required to collocate its own cross-connection equipment with a third party.

BellSouth's position that transport carriers are cross connecting merely "among themselves," and not with the ILEC fails to acknowledge the ultimate interconnection and/or

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107 Verizon Comments at 12-13.

108 USTA Comments at 2.

109 SBC Comments at 17 n. 16 (emphasis added).

access to UNEs with the ILEC network that made possible by such cross-connections.[110] Specifically, collocation by competitive transport providers makes it possible for other CLECs to provide competitively viable service in tandem with ILEC interconnection and ILEC UNEs. Accordingly, SBC's position that "cross connects have nothing to do with connecting a CLEC to an ILEC's network" is unfounded.[111] Both BellSouth and SBC would have the Commission ignore the reality that the transport carrier is in fact supporting other carriers that purchase interconnection and access to unbundled elements in the ILEC network – a situation that may not otherwise have been economically feasible *but for* the existence of the transport carrier.[112] The transport carrier's business, at bottom, is to access exchange traffic originated on the ILEC network, albeit first concentrated in the equipment of a another CLEC. In other words, the transport carrier is interconnecting with the ILEC, albeit indirectly.[113] The Commission should clarify that the ILEC obligations under Section 251(c)(6) encompasses not only direct interconnection or access to UNEs, but *indirect* as well where done in combination with *direct* interconnection.

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110 BellSouth Comments at 8.

111 SBC Comments at 23.

112 *See* Joint Comments at 44 (stating that without the ability to cross-connect with another collocated carrier -- *e.g.* a provider of transport -- a carrier may not be able to use collocation to interconnect or access UNEs).

113 *See* Allegiance Comments at 68-69: "ILECs will undoubtedly argue that the intended meaning of the statute is to provide for collocation of equipment necessary for interconnection *to the ILECs' network only*. Nothing in the legislative history supports that argument." (emphasis added).

By contrast, ILECs, such as Sprint and Qwest, support the need for CLEC cross connections. While Qwest's interpretation[114] of the collocation of cross connects is, unfortunately, interpreted more narrowly than Sprint's, both carriers' opinions in this regard are noteworthy as they demonstrate an internal balancing of both CLEC and ILEC interests – precisely what the Commission is tasked to do in this proceeding. In this regard, it is significant to note that when Sprint took into account a set of rules that would "facilitate CLEC entry on economically viable terms and in a fashion that minimizes the ability of other ILECs to increase artificially the costs of entry and delay the entry process,"[115] it came out, *unquestionably*, in favor of allowing CLECs to collocate their own cross-connect facilities in ILEC central offices in order to interconnect directly with other CLECs.[116] Notably, Sprint justified its position due to its belief that "forcing a CLEC to use the ILEC for transport entrenches ILEC market power," and that, "without CLEC-CLEC interconnection, CLECs that do have their own transport facilities are deprived of the opportunity to increase the utilization of such facilities by transporting the traffic of other CLECs." [117]

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114 As explained in its initial comments, Qwest believes that it is "just and reasonable" to permit cross-connects between CLECs in an ILEC central office, provided that those CLECs have met the Section 251(c)(6) standard to obtain collocation in the ILEC premises in the first place (*i.e.* to obtain access to UNEs or interconnect with the ILEC's network). Qwest Comments at 16. However, Qwest would limit the collocation of cross-connects where they are established for the *sole or primary* purpose of cross-connecting to other CLECs. *Id.*

115 Sprint Comments at 2.

116 *Id.* at 13.

117 *Id.*

2. The Commission should require the ILECs to collocate CLEC-CLEC cross-connects in order to advance the "just, reasonable and nondiscriminatory" standards of collocation under Section 251(c)(6).

Any rule limiting the ability of CLECs to cross connect with each other violates a central purpose of both the Act in general and section 251(c)(6) in particular – *i.e.* to provide CLECs with "non-discriminatory access" to ILEC networks.[118] ILECs can and do use cross-connects with CLECs in the central office. Indeed, these are a necessary component in the primary method of interconnection to collocated equipment. Failure to permit CLECs to connect with other CLECs in the central office necessarily discriminates against CLEC access to the ILEC network and places CLECs at a competitive disadvantage vis-à-vis the ILEC, resulting in greater costs to CLECs and less consumer choice.[119] Were ILECs are not required to permit cross connection between collocators, CLECs would be forced either to connect directly with the ILEC as a transiting carrier or to incur the cost-prohibitive expense of self-provisioning their own fiber backbones, which will connect them *outside of* the central office – a burden and network inefficiency to which the ILECs are not subject. This not only results in greater costs to CLECs but also may thwart CLEC advanced optical networking initiatives that require the lease of dark fiber.[120]

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118 Allegiance Comments at 69; Joint Comments at 45-46; Mpower Comments at 26.

119 CTSI and Waller Creek Comments at 16. *See also* Allegiance Comments at 69; Corecomm, Vitts Network and Logixs Comments at 29.

120 RCN Comments at 16; Telergy Comments at 34. *See also* Allegiance Comments at 70 (expressing concern that adequate quality optical cross-connects are unavailable from the ILECs at capacities beyond OC-48 levels and, as such, the inability to directly provision cross-connects will "prevent CLECs from utilizing the most advanced cross-connection capabilities.")

Furthermore, as a matter of policy, cross-connects, including transport carrier collocation and cross-connection is necessary for other CLECs to achieve interconnection and access to ILEC unbundled network elements, where such carriers otherwise could not, due to cost considerations and limited resources. Both the record and the Commission's experience demonstrate that it is materially more efficient to permit CLEC-CLEC cross-connects within the central office than elsewhere in the network.[121] Cross-connecting must be accomplished in the central office in order to achieve the same efficiencies enjoyed by the ILECs, and thus to enable CLECs to compete on level playing field in order to provide the kinds of services customers demand in the marketplace today.

V. IF THE COMMISSION DETERMINES THAT SECTION 251(C)(6) DOES NOT REQUIRE ILECS TO PERMIT CROSS-CONNECTS OF COLLOCATORS, VIABLE ALTERNATIVES MUST BE CONSIDERED.

If the Commission does not find that the collocation of cross-connects falls squarely within Section 251(c)(6) – as the Joint Commenters have shown that it should – the Commission should use its authority under other provisions of the Act to require the ILECs to provide cross-connection as an unbundled network element. This position has considerable support in the record.[122] As advanced in the Initial Comments, carrier-to-carrier cross-connects clearly are network elements, and undoubtedly meet the "impair" standard set forth by the Commissioner in the *UNE Remand Order*.[123] Failure to establish cross-connects as a UNE would force carriers to collocate outside of the ILEC central office at considerable and

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121 COMPTEL Comments at 7; MFN Comments at 21.

122 Allegiance Comments at 65; Focal Comments at 21; Joint Comments at 47-51; MFN Comments at 21; NorthPoint Comments at 14.

123 *See* Joint Comments at 49.

burdensome expense.[124] Given the "impairment" that would occur as a result of forcing CLECs to collocate fiber pulls outside of the central office, when a much more efficient alternative easily and inexpensively could take place inside of the ILEC central office, cross-connects clearly qualify as network elements under the Commission's current framework for identifying UNEs.

As a final – and least desirable – alternative, the Commission should require ILECs to tariff a cross-connection service, in accordance with the language of Sections 201(a) and 251(a)(1).

VI. THE JOINT COMMENTERS SUPPORT THE ADOPTION OF CERTAIN OTHER CROSS-CONNECT RULES RECOMMENDED BY OTHER COMMENTERS.

In addition, the Joint Commenters wish to express their support for several related cross-connect proposals submitted by other commenters to this proceeding. In particular, the Joint Commenters agree that the following rules should be adopted:

- The Commission should permit CLECs to choose the type of cross-connect (*i.e.* fiber or metallic) that they wish to collocate.[125] This includes copper cross-connects, which are technically feasible at all appropriate points of interconnection.[126]

- The Commission should adopt Focal's cross-connect hosting" proposal, which would enable CLECs to place their own cable so as to avoid unreasonable and costly ILEC provisioning delays.[127]

- The Commission must establish rules to prevent the ILECs from imposing cost-prohibitive charges for special construction arrangements (*e.g.* where CLECs need to establish cross-connects in order to access subloop elements).[128]

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124 Joint Comments at 50-51. *See also* MFN Comments at 16-19; Comptel Comments at 7.

125 Covad Comments at 28-30.

126 IntraSpan Comments at 16-17.

127 Focal Comments at 19-20.

128 RythymsNet Comments at 87-88.

VII. THE COMMENTS FILED PROVIDE PERSUASIVE SUPPORT FOR THE ADOPTION OF ADDITIONAL NATIONAL COLLOCATION STANDARDS.

A. THE COMMENTS FILED DEMONSTRATE THAT THE COMMISSION CAN AND SHOULD ADOPT PROVISIONING INTERVALS THAT ARE SHORTER THAN 90 DAYS FOR FORMS OF COLLOCATION OTHER THAN CAGED.

In their Initial Comments, the Joint Commenters argued that the FCC should adopt national standards for the provisioning of all types of collocation, and that these intervals should be shorter than 90 days for forms of collocation other than caged physical collocation.[129] The vast majority of commenters agree with the Joint Commenters' proposal.[130] Commenters such as GSA, @Link, Allegiance, and AT&T confirm that intervals under 90 days are justified because these forms of collocation other than the caged require the ILECs to complete only a portion of those activities that are required to establish traditional caged collocation arrangements.[131] RCN notes that adopting shorter collocation intervals is particularly appropriate because the ILECs now have substantial experience with collocating CLEC equipment and installing equipment used by both CLECs and ILECs to provide advanced services.[132]

There is no basis for requiring longer intervals or for leaving the establishment of provisioning standards up to the states, as suggested by some ILECs. SBC, Verizon, and

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129 Joint Comments at 55-59.

130 *See, e.g.,* @Link Networks Comments at 31-32; Allegiance Comments at 75; AT&T Comments at 70-71; Conectiv Comments at 23-24; CTSI Comments at 21-22; GSA Comments at 8-9; Mpower Comments at 32-33; Northpoint Comments at 22; RCN Comments at 18; Rhythms Comments at 64; Sprint Comments at 28-29; Telergy Comments at 38.

131 GSA Comments at 8; @Link Comments at 31; Allegiance Comments at 75; AT&T Comments at 69-70.

BellSouth argue that provisioning forms of collocation other than caged is just as time-consuming from the ILECs' perspective as provisioning caged collocation.[133] Verizon and SBC also argue that the ILECs cannot consistently provision collocation within a 90-day period.[134] However, as the Joint Commenters explained in their Initial Comments, the states have shown that these arguments are not valid. Many states have adopted and implemented shorter intervals for forms of collocation other than caged, and the ILECs – including SBC and BellSouth -- are successfully meeting these intervals in some states.[135] Qwest and Verizon argue that the Commission should leave the development of standards to the individual states and thus should not adopt nationwide provisioning intervals.[136] The Commission should not accept this argument. As the Joint Commentors explained in their Initial Comments, collocation space must be available nationwide on a predictable and timely basis if the CLECs, many of whom provide services in multiple states spanning the territories of many ILECs, are to compete effectively in the markets for advanced services and other telecom services.[137] Operating under many mandated provisioning intervals that vary from state to state would impose undue complexity on the operations of both the CLECs and the ILECs.[138]

(…continued)

132 RCN Comments at 18.

133 *See* SBC Comments at 42-45; Verizon Comments at 22; BellSouth Comments at 21.

134 *See* Verizon Comments at 21; SBC Comments at 42.

135 *See* Initial Comments at 58 (*e.g.*, Florida – 60 days for virtual collocation under ordinary conditions; Texas – 55 days for cageless in active collocation space when the CLEC installs its own bays; experience of DSLnet with SWBT has been that it is not difficult for SWBT to meet the cageless interval requirement in Texas).

136 Qwest Comments at 32; Verizon Comments at 23.

137 Initial Comments at 55-56.

138 Sprint Comments at 27.

B. THE COMMENTS FILED SUPPORT ADOPTION OF NATIONAL STANDARDS FOR COLLOCATION SPACE RESERVATION SIMILAR TO THOSE ADOPTED BY THE STATES.

In their Initial Comments, the Joint Commenters strongly urged the Commission to adopt a national space reservation policy.[139] The vast majority of commenters agree that nationwide space reservation standards should be adopted to ensure that the ILECs cannot limit the amount of space available to CLECs by reserving space for themselves or their affiliates for unreasonable periods.[140]

ILEC arguments against national standards for collocation space reservation are distinctly lacking in merit. BellSouth, Verizon, and SBC argue that the FCC should not adopt national standards. Rather, the states should be left to adopt their own standards, or the Commission should rely on the arbitration/state negotiation process.[141] The Commission should not accept this argument. National standards will better serve the public interest by creating more certainty for CLECs that collocation space will be available. Furthermore, as many commenters observed, the question of how long ILECs should be allowed to reserve space in a central office does not require a state-specific determination.[142] Relying on the arbitration/state negotiation process simply increases the CLECs' costs and prolongs the process of assuring the availability of collocation space for competitive operators.

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139 Initial Comments at 59.

140 @Link Comments at 35-37; Allegiance Comments at 98-100; AT&T Comments at 71-74; CoreComm Comments at 61-65; Covad Comments at 47-48; CTSI Comments at 48-49; GSA Comments at 9-10; Mpower Comments at 62-67; Northpoint Comments at 23; RCN Comments at 25-27; Rhythms Comments at 34-39; Sprint Comments at 33; Telergy Comments at 60-62.

141 BellSouth Comments at 21-25; Verizon Comments at 32; SBC Comments at 49.

Similarly, the Commission should reject the arguments of SBC for longer space reservation periods – as long as 10 years for certain types of equipment – without further consideration.[143] A 10-year reservation period is *prima facie* unreasonable in light of the rapid evolution of technology in this industry and the continuing trend toward smaller and more integrated equipment. The needs of ILECs such as SBC to reserve space to meet future requirements must be balanced against the needs of competitors to gain access to valuable central office space and against the interest of the Commission in ensuring that the CLECs have an opportunity to compete.

VIII. THE RECORD CLEARLY INDICATES THAT THE COMMISSION SHOULD BOLSTER ITS SUBLOOP UNBUNDLING RULES IN LIGHT OF EVOLVING NETWORK TOPOLOGY AND TECHNOLOGIES.

The record reveals overwhelming support for the clarification and amendment of the Commission's subloop unbundling rules. In their Initial Comments the Joint Commenters, along with the vast majority of commenters, urged the Commission to amend its loop unbundling rules to require unbundled access to the loops consisting of optical wavelengths generated by dense wavelength-division multiplexing ("DWDM") equipment, in addition to DS1, DS3, fiber, other high capacity loops.[144] While many commenters contend that the Commission's existing rules already require access to DWDM and all other high capacity loops, the record clearly supports amending those rules to eliminate any remaining doubt.[145] Besides clarifying that

(…continued)

142 @Link Comments at 36; Allegiance Comments at 97-98; RCN Comments at 27.

143 *See* SBC Comments at 54.

144 *See* AT&T Comments at 37; Focal Comments at 30-31.

145 Sprint Comments at 34.

unbundled access to loops through DWDM is required under the Act, the Joint Commenters urged the Commission to clarify that as part of their unbundling obligations, ILECs must provide access to all technically feasible transmission speeds and quality of service classes. The record supports these rules modifications. As Northpoint notes, only when CLECs have access to the full array of features, functions and capabilities of the advanced services equipment that ILECs place in their own remote terminals will there be a level playing field.[146]

Furthermore, the record clearly supports the Joint Commenter's position that collocation at the remote terminal is both necessary and technically feasible. The Joint Commenters, along with the majority of commenters in this proceeding, support amending the Commission's rules to ensure that competitors have the ability to cross-connect at the remote terminal, and to ensure that ILEC's OSS systems can support the new obligations to provide access to the subloop.

A. TWO MAJOR ILECS, QWEST AND SPRINT, ALONG WITH THE MAJORITY OF COMMENTERS IN THIS PROCEEDING AGREE THAT CLECS SHOULD HAVE ACCESS TO ALL CAPABILITIES, FEATURES AND FUNCTIONS OF THE SUBLOOP, INCLUDING DWDM AND CBR/VBR.

In their Initial Comments, the Joint Commenters argued that the Commission should clarify its rules to fulfill its intention "that the loop definition will *apply to new as well as current technologies*, and to ensure that competitors will continue to be able to access loops as an unbundled network element as long as that access is required pursuant to Section 251(d)(2) standards."[147] Sprint, along with the majority of commenters in this proceeding, agree with the Joint Commenters that the Commission's rules must be clarified to make clear that the optical

146 Northpoint Comments at 30.

wavelengths generated by DWDM equipment differ in no way from any other capacity derived from copper or fiber facilities.[148] Qwest argues that DWDM should be treated merely as additional *capability* of the loop and *not* as additional *capacity* of the loop.[149]

Verizon parts company with its ILEC brethren, and argues that there is "no justification for attempting to unbundle DWDM multiplexing technology, even if such unbundling were technically possible, which it is not."[150] The Commission should reject Verizon's argument. It is based on the false predicates that (1) DWDM equipment is proprietary; and (2) that it is not technically feasible to unbundle DWDM into separate wavelengths.[151]

SBC goes a step further, arguing that "consideration of how to treat DWDM equipment is premature" given that in SBC's estimation, "the use of DWDM in RTs in unlikely, given the size and power requirements of DWDM and the space limitations in RTs."[152] SBC's analysis is based on a misunderstanding of the Commission's inquiry. First, the Commission was not soliciting comment on how to treat the equipment itself, but rather, on whether "the optical wavelength generated by the DWDM equipment is itself a loop."[153] Moreover, as discussed at length in the Joint Commenter's initial comments and the comments of others, SBC

(…continued)

147 Joint Comments at 63 citing *UNE Remand Order*, ¶ 167.

148 Sprint Comments at 34.

149 Qwest Comments at 33.

150 Verizon Comments at 34.

151 *Id.*

152 SBC Comments at 57-58.

153 *Fifth FNPRM*, ¶ 122.

cannot merely use the excuse of space limitations to deny competitors access to any kind of loop, including a loop generated by DWDM equipment.[154]

In their Initial Comments, the Joint Commenters urged the Commission to require ILECs to provide access to all technically feasible transmission speeds and QoS classes that exist in attached loop electronics, even if the ILECs do not use such transmission speeds and QoS classes themselves, and make them available to competitive providers at forward-looking incremental cost.[155] As the record reveals, competitive carriers whole-heartedly agreed with the Joint Commenters. Mpower, for example, stated that carriers should be allowed either to access unbundled loop functionalities such as wavelengths, separate from other loop functions, or the entire unbundled loop facility.[156]

Verizon argues that CBR and VBR are merely "service classes" that cannot be "physically accessed," in the sense of Section 251(c)(3),[157] and that "unbundling requirements should relate only to network elements the incumbents provide, not classes of service or other network characteristics,"[158] because they cannot be physically accessed. Verizon contends that these classes and characteristics are "attributes of a particular service and may sometimes be created or modified by CPE over which the carrier has no control."[159] Similarly, SBC, with the expected amount of hyperbole, starts off by arguing that "allowing CLECs unrestricted access to

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154 *See* Joint Comments at 70-72.

155 *Id.* at 65-66.

156 Mpower Comments at 49.

157 *Id.*, 37.

158 Verizon Comments at 37.

159 *Id.*

all transmission speeds and QoS classes would destroy the availability, reliability, and functionality of the broadband facility."[160] Later, SBC backs off its assertions, arguing only that to the extent the Commission requires unbundling of the subloop in a manner that allows CLECs to access all technically feasible transmission speeds and QoS classes, the Commission should require that they be priced based on cost.[161]

Verizon's and SBC's fellow ILEC, Qwest, rejects such arguments, as should the Commission. Qwest acknowledges that CBR and VBR are features and functions of the subloop that are technically capable of being unbundled and to which CLECs should have access.[162] As the Joint Commenters noted in their Initial Comments, in the *UNE Remand Order* the Commission expanded its definition of the loop to include "all features, functions, and capabilities of the transmission facilities, including dark fiber and attached electronics."[163] Qwest urges coordinated planning and traffic engineering and resolution of engineering policy through industry forums.[164] The Joint Commenters agree with Qwest that such a coordinated approach may be warranted, commensurate with the clarification of the Commission's rules, in order to ensure that capacity on the loop facilities is available and capable of supporting future demand.

At bottom, CLECs must have access to the same functionality of the network as the ILEC enjoys in order to have the ability to offer customers the same classes of service that

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160 SBC Comments at 66.

161 *Id*., 70.

162 Qwest Comments at 35.

163 Joint Comments at 70, citing *UNE Remand Order*, ¶ 167.

164 *Id*.

ILECs are capable of offering—regardlesss of what the ILECs *actually* offer. One of the few ways available to provide CLECs with that ability is to provide them access to a permanent virtual path over which they exercise control, just like any other UNE, and which would allow competitors to provide any QoS of their choosing for any given customer. Such unbundled access will allow CLECs to differentiate their services by altering their own oversubscription rates—even if only UBR is offered over the equipment in question. Furthermore, due to the competitive importance of the ability to provide QoS classes of their own choosing, the Commission should ensure that such features and functions are available to CLECs without delay by mandating that they be provided immediately at prices below tariffed rate until such time as permanent prices can be established.

B. THE COMMISSION SHOULD REJECT ILEC ARGUMENTS THAT PHYSICAL COLLOCATION AT THE REMOTE TERMINAL IS UNNECESSARY AND NOT TECHNICALLY FEASIBLE.

The record reveals overwhelming support for the Joint Commenters' position that collocation at the remote terminal is both technically feasible and necessary to achieve the objectives of Sections 251(c)(2) and 251(c)(3) and that, accordingly, the Commission should amend its rules expressly to recognize this reality.[165] The Commission has already established "a rebuttable presumption that the subloop can be unbundled at any accessible terminal in the outside loop plant" thereby tacitly recognizing that remote terminal collocation is technically

[165] Joint Comments at 72; CoreComm Comments at 35-37; General Services Administration Comments at 6-7; IntraSpan Communications Comments at 8-9; Mpower Comments at 36-37; Qwest Comments at 25; RCN Comments at 20-21; Rhythms Comments at 44-48; Sprint Comments at 18; Telergy Comments at 40-41; WorldCom Comments at 13.

feasible.[166] The record is replete with support for the Commission's well-established axiom that no distinction, either as a practical or legal matter, may be drawn between collocation at the central office and collocation at other ILEC premises, including remote terminals.[167] As evidenced by the overwhelming weight of comments in the initial round of this proceeding, the Commission should unequivocally conclude that collocation at the remote terminal is both necessary and technically feasible, and should reject out of hand ILEC claims to the contrary.[168] Consequently, the Commission should forbid ILEC efforts to render remote terminal collocation untenable through policy-based deployment decisions that lack any technical basis or justification.[169]

Indeed, Qwest, along with almost every other commenter in this proceeding, acknowledges that CLECs must be afforded physical collocation at ILEC remote premises.[170] Qwest stated that it "supports collocation at remote LEC premises, and believes that collocation should provide access to subloops at workable interconnection points."[171] CoreComm agrees with the Joint Commenters that ILECs should be required to reserve 50% of available physical

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166 *UNE Remand Order*, ¶ 223. In tacitly requiring remote terminal collocation and rejecting ILEC claims that such collocation is not technically feasible, the Commission noted that "incumbent LECs raised similar doubts as to whether collocation would be feasible at central offices. As indicated by the number of collocation arrangements in place today, these doubts were not well-founded." *UNE Remand Order*, ¶ 221.

167 AT&T Comments at 37; CoreComm, Inc. Comments at Vitts Networks, Inc. and Logix, Inc. Comments at 35; CTSI and Waller Creek Communications Comments at 6.

168 @Link Comments at 16; Allegiance Comments at 81-83; CoreComm Comments at 35; CTSI Comments at 6; RCN Comments at 20; Rhythms Comments at 27; Telergy Comments at 40.

169 CompTel Comments at 14; Joint Reply Comments at Sec. VIII.D, *infra*.

170 Qwest Comments at 25-27; @Link Comments at 28; Allegiance Comments at 83.

171 *Id*., 25.

collocation space in remote premises for CLECs.[172] Where equipment is not capable of being physically collocated, the Commission should require that adjacent collocation on ILEC premises be made available utilizing the same rights of way available to ILECs.[173]

BellSouth, while acknowledging that it must provide physical collocation at the remote premises, merely states that it "does not feel that its is practical" to require physical collocation of multiple carriers' equipment in a single bay.[174] This is not a compelling argument. Equally unpersuasive is Verizon's suggestion that ILECs be given the discretion to determine the most efficient use of space at the remote terminal and that ILECs be allowed to utilize escorts if physical collocation at remote terminals is required.[175] Verizon's unsubstantiated and overblown security concerns relating to remote terminals should be rejected by the Commission.[176] Similarly, BellSouth argues that "security concerns are far greater in a remote location" and that "those concerns would be greatly ameliorated if the standard from of collocation for remote premises were virtual or adjacent collocation."[177] As the Joint Commenters stated in their initial comments, and as recognized by at least Sprint,[178] virtual collocation is not an always an adequate substitute for physical collocation. Nonetheless, virtual collocation should be *an option* for CLECs.

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172 CoreComm Comments at 38.

173 *Id.*

174 BellSouth Comments at 17.

175 Verizon Comments at 28.

176 *Id.*

177 BellSouth Comments at 14.

178 Sprint Comments at 19.

C. THE RECORD CONVINCINGLY SUPPORTS AMENDING THE COMMISSION'S RULES TO REQUIRE THAT ILECS PROVIDE NONDISCRIMINATORY ACCESS TO OSS FOR SUBLOOP FUNCTIONALITIES.

The Joint Commenters urged the Commission to amend its rules to ensure that CLECs are guaranteed nondiscriminatory access to all OSS functions necessary to place orders for all features and functions of the fiber feeder portion of the subloop, including the remote subloop testing functions, on a nondiscriminatory basis.[179] Sprint and Rhythms agree with the Joint Commenters that as new features of the loop become available, modifications to OSS are necessary to allow competitors to access the full range of access to those features, including pre-ordering, ordering, maintenance, repair and billing.[180] Otherwise Section 251(c)(3) access to the loop, as contemplated by the Commission in its *Local Competition Order* and *UNE Remand Order* will not be realized.

Rhythms also agrees with the Joint Commenters that ILECs must make OSS systems necessary for accessing NGDLC loops available to CLECs.[181] The Commission should reject Verizon's contrary argument that physical collocation of line cards, for example, would create an "OSS nightmare."[182] SBC contends that "there is no reason to modify the existing OSS because the change management process already accommodates the operation issues associated with new technology, including NGDLC technology."[183] The Joint Commenters' experiences with ILEC change management processes has, as a general matter, not been good. Furthermore,

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179 Joint Comments at 79-80.

180 Sprint Comments at 37; Rhythms Comments at 82.

181 Rhythms Comments at 82.

182 Verizon Comments at 10.

183 SBC Comments at 72.

SBC's own record in working cooperatively with CLECs on OSS issues is less than stellar. Indeed, pursuant to the *SBC/Ameritech Merger Order*, SBC was required to work with CLECs in collaborative sessions in order to develop and deploy OSS enhancements to its Datagate and EDI pre-ordering and ordering interfaces.[184] However, CLECs were unable to reach agreement with SBC on a number of OSS development issues, and ultimately were forced to seek Commission arbitration to address them. The Commission authorized arbitration of two of the seven issues on which CLECs sought arbitration, and attempted to provide guidance on the resolution of the others.[185] Tellingly, one of the issues which the Commission decided to arbitrate was whether SBC's OSS modifications were in development as of December 6, 1999, and if so, whether SBC should be required to provide CLECs with additional technical documentation to enable CLECs to evaluate the proposed modifications.[186] To the extent that *this* is the change management process which SBC contends there is no reason to modify, the Joint Commenters must take strong exception, and again urge the Commission to order ILECs to stop making excuses and to work with CLECs on a collaborative basis to develop OSS that is capable of supporting NGDLC technology.[187] Furthermore, the Commission should, as it did in the *SBC/Ameritech Merger Order*, authorize the Common Carrier Bureau to resolve disputes stemming from the ILEC/CLEC collaborative OSS development process nationwide.[188]

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184 Letter of Carol E. Mattey, Deputy Chief, Common Carrier Bureau to Ms. Cassandra Carr, Senior Executive Vice President—External Affairs, DA 00-2346 (rel. Oct. 18, 2000) ("SBC OSS Arbitration Letter").

185 SBC OSS Arbitration Letter at 2-4.

186 *Id.* At 3.

187 Joint Comments at 80-81.

188 *See SBC/Ameritech Merger Order* at ¶ 371.

D. THE COMMISSION SHOULD REJECT VERIZON'S ARGUMENT THAT CROSS CONNECTIONS AT THE REMOTE TERMINAL ARE NOT TECHNICALLY FEASIBLE.

In their Initial Comments, the Joint Commenters made clear that the Commission should specifically require ILECs to permit cross connections at any remote premises. They were joined in this position by a number of commenters in this proceeding.[189] In its comments, Verizon argues that cross-connection at the remote terminal is not technically possible.[190] Oddly enough, Verizon is the *only ILEC commenter* to raise this unsupported (and unsupportable) argument. Indeed, another ILEC, Qwest, believes that it is technically feasible, and notes that it provides access to subloops throug a product called "Field Connection Point" which "allows a CLEC to bring its cable into any accessible terminal."[191] While the Joint Commenters disagree with Qwest's argument that the cost of providing cross-connection at remote terminals should be priced under "special construction" arrangements, the Joint Commenters nonetheless note that Qwest concedes the feasiblity of remote terminal cross-connection.

SBC argues that its "hardwire" arrangements – – whereby "copper wiring harness from the backplane of the channel banks assembly in the RT is spliced to the copper cable – – which service the various SAIs with the serving geographic area" is the "only method that both maximizes service quality and minimizes the amount of space required for access."[192] SBC's assertion is wholly unsupported. As IP Communications observes, "it is certainly technically

189 Joint Comments at 79.

190 Verizon Comments at 28-29.

191 Qwest Comments at 40.

192 SBC Comments at 75-76.

feasible to have cross-connect capability at a remote terminal without hardwiring."[193] Indeed, Sprint (an ILEC in some territories), details an alternative solution, consisting of a cross-connect box between the DLC and the copper sub-loop, that could be easily implemented by Verizon or SBC.[194] Accordingly, because cross-connections in remote terminals are clearly technical feasible and undoubtedly necessary, the Commission should reject the ILEC's arguments and mandate that cross-connections at the remote terminal be made available at forward looking cost in order to provide CLECs with access to the sub loop.

E. THE COMMISSION SHOULD REJECT ILEC ARGUMENTS THAT NOTIFICATION REGARDING DEPLOYMENT OF FIBER FACILITIES IS UNNECESSARY AND THAT AND THAT COPPER FACILITIES NEED NOT BE MAINTAINED FOLLOWING SUCH DEPLOYMENTS .

The Joint Commenters proposed that the Commission require ILECs to notify competitors at least 12 months prior to the deployment of remote terminals, and in addition, require ILECs to continue to maintain their existing copper loop infrastructure for a ten-year transition period so that these loops may be provided as network elements to requesting telecommunications carriers.[195] Commenters, such as Mpower, agree with the Joint Commenter's proposal that the Commission require ILECs to require that copper loop facilities be maintained for at least ten years in order to ensure that competitors have an opportunity to finance and implement business plans.[196] As Focal points out, permitting ILECs to retire existing copper facilities would preclude competition in all but the most concentrated urban

193 IP Communications Comments at 17.

194 Sprint Comments at 39-40.

195 Joint Comments at 87-88.

196 Mpower Comments at 61.

centers.[197] Moreover, as IP Communications observes, the ILEC's proposal to sell retired copper to CLECs does not ameliorate the harms that taking copper out of service would cause due to the fact that competitors would both lose the value of having that copper interconnected to the ILEC network, and would incur substantial costs in order to make the copper accessible to the CLEC's own equipment.[198]

SBC argues that the Act's obligation to provide notice of network changes does not require ILECs to notify CLECs regarding the deployment of fiber because such notification is necessary "only if it would affect the interoperatibliy of the ILEC's network." SBC also claims that it already provides CLECs with more information than they are required to by the Act.[199] Qwest indicates that CLECs are notified of major network changes pursuant to provisions set forth in their interconnection agreements, and therefore, no additional notification requirements are necessary.[200] Voluntary efforts to provide notification can always be withdrawn, and absent clear rulings may not be in subsequent interconnection agreements. Verizon articulates no position regarding whether notification of fiber deployments is necessary, but states that when copper is replaced by fiber in the network there should be no obligation to maintain it, however Verizon does concede that "the Commission may find it reasonable to provide for a transition" period to give competitors an opportunity to "evolve their networks to the new technology."[201] Verizon is correct, and to ensure that new entrants receive adequate

197 Focal Comments at 33.

198 IP Communications Comments at 15.

199 SBC Comments at 65.

200 Qwest Comments at 39.

201 Verizon Comments at 39.

notification, the Commission should require that ILECs notify competitors at least 12 months prior to the deloyment of remote terminals. ILECs also should be required to maintain spare copper loop plant for a transition period of at least ten years.[202]

F. THERE IS BROAD SUPPORT IN THE RECORD FOR THE ESTABLISHMENT OF THE SEEL ADVOCATED BY THE JOINT COMMENTERS.

In their Initial Comments, the Joint Commenters proposed that the Commission establish an "intraloop EEL" known as the Subloop Enhanced Extended Loop or "SEEL" consisting of : 1) the copper subloop distribution; and 2) the fiber subloop feeder, with multiplexing in order to guarantee that the unbundled loop is capable of supporting advanced services, consistent with the Commission's unbundling and nondiscrimination rules the Act. The proposal, and others like it, found wide support in the initial round of comments. For example, @Link Networks supports crate of a Broadband fiber loop UNE that would provide a CLEC with integrated loop facilities.[203] Further, Telergy, *et al*. support the establishment of a new fiber loop UNE product that would provide an integrated loop, including all features and functions, at forward looking cost.[204] At bottom, carriers need unrestricted unbundled access to the full functionality of the NGDLC in order to provide both voice and data services to those end users., including data and voice functionalities.[205] New developments, including the announcement of

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202 Joint Comments at 88; Mpower Comments at 57-60; Northpoint Comments at 24-27.

203 @Link Comments at 10-11; Conectiv Communications Comments at 32; CTSI and Waller Creek Communications Comments at 45-46.

204 Telergy Inc., Adelphia Business Solutions, Inc., and Business Telecommunications, Inc. Comments at 53.

205 CompTel Separate Reply Comments at 10; IP Communications at 7-8. *See also* In the Matter of Ameritech Corp., Transferor and SBC Communications, Transferee for Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, (continued…)

the plan of some ILECs such as SBC and Verizon to deploy, on a massive scale, remote terminals in conjunction with DLC architecture, necessitate that the Commission establish the SEEL as a UNE.

IX. CONCLUSION.

For all the foregoing reasons, the Commission should act promptly to clarify and amend its collocation rules based on an interpretation of the Section 251(c)(6) as set forth herein. Further, the Commission should amend its loop unbundling rules as described above. Implementation of these revisions will go a long way in promoting the 1996 Act's goal of widespread facilities-based competition.

Respectfully submitted,

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(…continued)
63, 90, 95, and 101 of the Commission's Rules, CC Docket 98-141, *Second Memorandum and Order*, FCC 00-336, App. A at , FCC 00-336, App. A at ¶¶2-3 (rel. Sept. 8, 2000). ("*Project Pronto Order*").